

PRO SE DIVORCE SUITS

PRO SE or NO-FAULT divorce suits are best suited for couples who completely agree to getting a divorce. If you have children or property, or are alleging fault by your spouse, you may be best protected by retaining an attorney. If you do not know your spouse's whereabouts, or if he/she is in jail for committing a felony, you should hire an attorney. **The Clerk's Office cannot make recommendations for specific attorneys**, but you can call:

All persons involved in divorce cases are strongly encouraged to consult with an attorney so that the legal effects of these proceedings can be fully explained to each litigant. **IF YOU PROCEED WITHOUT LEGAL COUNSEL**, you may forever unknowingly waive your rights to custody or visitation, child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage.

The Virginia Lawyer's Referral Service
1-800-552-7977

or

The Fairfax Bar Association Lawyer Referral Service
703-246-3780

If you decide to proceed on your own, you will be expected to follow the same procedures as an attorney. It may take three to six months to complete your divorce if there are no complications.

Please Note: There are no specific forms to fill out for your divorce. You are responsible for preparing all documents pertaining to the divorce. Please **DO NOT** ask Court personnel for legal advice or assistance. Court personnel are prohibited by state law to give you legal advice or assistance.

Before you file for divorce, you may wish to review the appropriate divorce laws in the Virginia Code. The Virginia Code books are located in the Law Library at the Judicial Center and at Regional and Community Library locations. A review of these laws may help you better understand the divorce process.

All parties involved in divorce cases can present evidence on the grounds for divorce to one of the Court's Commissioners in Chancery. If all issues, such as grounds for divorce and distribution of property, are totally uncontested, a party may, by filing a Request of Ore Tenus Hearing, request a Judge of the Court to hear the evidence ore tenus (in Court).

PROCEDURE

STEP ONE:

In order for you to obtain a divorce in Virginia, either you or your spouse must be a resident of the Commonwealth of Virginia for at least six months prior to filing suit.

In your **Bill of Complaint** you must allege specific grounds upon which a divorce may be granted. The two most common situations or grounds for no-fault divorces are a six-month separation or a one-year separation. You are eligible for a six-month divorce only if you have a separation agreement and you do not have any minor, unemancipated children born of the marriage. Both of these facts must be stated in the Bill of Complaint. You and your spouse must have been separated for the required amount of time prior to filing your suit for a six-month or one-year divorce. This separation period must also be clearly alleged in your Bill of Complaint. You may **NOT** file your documents before the appropriate separation period has expired or your case could be dismissed. If the case is dismissed you will have to file for divorce again and pay another filing fee. You can also file several types of fault divorces which are treated differently than no-fault divorces.

In addition to stating the grounds and residency requirements, the Bill of Complaint must also include the following allegations:

- current residences of both parties
- the date and place of marriage
- a statement that both parties are of legal age and are mentally competent
- a statement of each party's military status
- the names, social security numbers, and dates of birth of any children born or adopted into the marriage

STEP TWO: PREPARING AND FILING YOUR BILL OF COMPLAINT

1. Submit three copies of your typed Bill of Complaint and completed VS-4 form to the Clerk's Office on the third floor, Civil Intake Counter, of the Circuit Court. The VS-4 form is a simple statistical form required by the state. You may obtain this form from the Clerk's Office. It must be completed properly in black ink, and placed in your file before your divorce can be finalized.

2. INITIAL FEES:

- \$64.00 filing fee
- \$12.00 fee to serve the Bill of Complaint if the Defendant lives in Virginia
- \$19.00 filing fee to resume Maiden Name

All Filing fees and Sheriff Service Fees are paid by cash, certified check or money order payable to the Clerk of the Circuit Court.

- **Please note:** If the Defendant does not live in Virginia, you will need to contact the Sheriff's department of the county in which your spouse resides in order to find out local regulations for service. You may wish to have the Defendant accept out-of-state service.

3. Your case will be given a Chancery Number as soon as it is filed. This is the number by which the Court references your case and it must appear on all documents regarding your divorce.

STEP TWO: PREPARING AND FILING YOUR BILL OF COMPLAINT CONTINUED:

4. After you file the Bill of Complaint, the Sheriff will receive a copy to serve on the Defendant if you have arranged for this service. The Defendant may also accept legal service of the Bill of Complaint by signing a notarized statement that he/she has received a copy of the Bill of Complaint. This may be done before any Notary Public or in the Clerk's Office. Once they have been served, the Defendant has 21 days to respond to the Bill of Complaint.
5. After the service, the Defendant may choose to waive further notice of the proceedings by executing a waiver form. A copy of this form is available in the Clerk's Office. The form must be signed under oath in front of a Notary Public or Deputy Clerk of the Circuit Court.

STEP THREE:

The Complainant will have the option of proceeding as follows:

- A. By continuing the existing Commissioner in Chancery procedure and having a Decree of Reference entered appointing a Commissioner; or
- B. By scheduling an **Ore Tenus** hearing with the Court. Call the Ore Tenus Clerk at, (703) 246-4200; or
- C. By taking evidence through deposition and submitting the deposition with a proposed Final Decree of Divorce.

NOTE: All contested divorces will continue to be handled by a Commissioner. If there are any property rights to be resolved, and the parties desire to put on evidence of facts and circumstances leading to the dissolution of the marriage, the case will still be heard by a Commissioner along with the grounds for divorce.

The only cases that shall be allowed to proceed by **Ore Tenus** hearing or by deposition shall be purely uncontested matters where all property, custody, child support and spousal support rights are resolved, where neither party is going to put on any fault grounds for divorce, and where neither party is going to put on any evidence of the facts and circumstances leading to the dissolution of the marriage.

A. COMMISSIONER'S HEARING

For the Court to assign a Commissioner in Chancery to hear your case, you must submit a **Decree of Reference**. The Commissioner is a local attorney appointed by the Court to hear the evidence in the divorce case. The Commissioner's fee, which varies, is paid by the Complainant. This Commissioner reports upon the matter to the Court and makes a recommendation as to whether or not a divorce should be granted.

You may submit the Decree of Reference to the Court 21 days after the Defendant has been served the Bill of Complaint, or once a waiver has been filed. It is your responsibility to keep track of this time period; the Court will **not** notify you.

If the Defendant has not waived notice, you must send notice of the presentation of the Decree of Reference by completing a **Certificate of Mailing**. This statement which appears at the end of the document certifies that you have mailed a copy of the Decree of Reference to the Defendant. The Certificate of Mailing must include the following:

- the Defendant's name
- the date you mailed the Decree of Reference
- the address to which you mailed the Decree of Reference
- your signature

A. COMMISSIONER'S HEARING CONTINUED

Seven to ten days after filing the Decree of Reference, you must call (703) 691-7320, press 3,1,0 to receive the name and phone number of the Commissioner who has been appointed; you must contact him/her to arrange a time for your hearing. After the hearing date is set, you must serve the Defendant with a **Notice of Commissioner's Hearing** stating the date, time and place of the hearing. (You do **not** have to do this if the Defendant has waived notice.) You need to have the Sheriff's Office serve him/her with the Notice of the Commissioner's Hearing. (There is a \$12.00 fee for each service by the Sheriff. Certified check or money order are made payable to the Clerk of the Court.) Should the defendant not be given sufficient notice, you may be required to reschedule your hearing in order to give him/her enough time to prepare.

AT THE HEARING

You must be prepared to present evidence to support every allegation in your Bill of Complaint. You must also bring a witness to corroborate your testimony. Many Commissioners question you and your witness to elicit testimony. Some Commissioners may require you to present all of the evidence and to question the witness yourself.

After the hearing, the Commissioner has 30 days to submit his/her report to the Court. The Commissioner will notify you and the Court once the report has been filed. You will receive a copy of this report.

B. ORE TENUS HEARING

At the time the Request for Ore Tenus Hearing is filed, the party filing the Request **must** submit with the Request, the original proposed Final Decree of Divorce and a copy of any Property Settlement Agreement the parties may have executed. The Decree must contain the endorsement of each party who is legally entitled to notice of the ore tenus hearing and who will not be appearing at the hearing, unless the moving party will be serving the proposed Decree on that party along with the Notice of the date and time of the ore tenus hearing. The original of any Property Settlement Agreement should be presented to the Court at the ore tenus hearing.

Upon filing of a Request for Ore Tenus Hearing, the file will be forwarded to one of the judges' law clerks for review of all pleadings, including the proposed Final Decree of Divorce, to assure compliance with all statutory requirements. The law clerk will advise counsel for the moving party, or the moving party if the litigant is proceeding without counsel, in writing, as to the sufficiency of the pleadings.

1. If the law clerk has advised that the pleadings comply with all statutory requirements the moving party must contact the ore tenus clerk within fourteen calendar days of the date of the written notice, at (703) 246-4200 to schedule the hearing. If required by law, notice of the date and time of the hearing must be served on the other party.
2. If the pleadings do not comply with all legal requirements, the law clerk will mail the Court's Rejection of Ore Tenus Filing Form (Rejection Form) to the moving party and the moving party will then have up to fourteen days from the date of the Rejection Form to correct all deficiencies and return the corrected pleadings along with the bottom half of the Rejection Form fully completed to that law clerk. All corrections must be received within the fourteen day period and should be addressed to the specific law clerk who signed the Rejection Form c/o the Clerk of the Circuit Court of Fairfax County. **Simply filing or mailing the correct pleadings to the office of the Clerk of Court, without including the bottom half of the Rejection Form and noting that they are to be forwarded to the specific law clerk, will not be sufficient.**

All communications with the Judges' law clerks must be in writing and limited to the matters set forth in the law clerk's postcard. Telephone calls relating to ore tenus cases will not be received by the law clerks. Furthermore, since the law clerks are not permitted to give legal advice to attorneys or to pro se parties, requests for such advice will not be entertained.

B. ORE TENUS HEARING CONTINUED:

If the revised pleadings comply with all statutory requirements, the law clerk will so advise you in writing and you must then contact the ore tenus clerk within fourteen days of the date of the law clerk's postcard to schedule your hearing.

If the revised pleadings do not meet all statutory requirements, or if the moving party has not scheduled the ore tenus hearing within fourteen days of the date of the law clerk's postcard, the parties will thereafter have to proceed to present the evidence in support of the grounds for divorce to a Commissioner in Chancery.

AT THE ORE TENUS HEARING

The hearing before the Judge is approximately ten minutes. You must be prepared to present evidence to support every allegation in your Bill of Complaint through the testimony of yourself and a corroborating witness. You must bring the witness with you at the time of the hearing; it is your responsibility to make certain that your witness can be present on the hearing date. The corroborating witness should have direct knowledge of the matters to which they will testify. The witness' knowledge must be based on something more than the information you give the witness in preparation for the hearing. The presiding Judge cannot serve as an attorney, and the moving party must be prepared to ask the relevant questions.

If all legal requirements have been satisfied, the Judge will generally enter the Final Decree of Divorce at the hearing. If your case requires the presence of the Court Reporter at the Ore Tenus hearing your final decree will not be entered until the transcript of the hearing is filed with the Circuit Court.

C. DEPOSITION HEARING

The procedure for handling uncontested divorces by deposition shall be similar to that in surrounding jurisdictions, wherein either party or their counsel shall send proper notice of a deposition and have the deposition taken before a Court reporter and put on evidence of the no-fault divorce at the deposition with sufficient corroboration. Thereafter, the transcript of the deposition shall be prepared and either reviewed by the witnesses or waived in accordance with the statute and submitted to the Court along with the Final Decree of Divorce.

STEP FOUR: THE FINAL DECREE

You may prepare and file your **Final Decree of Divorce** once you receive the Commissioner's Report. This Decree must re-allege all the basic information stated in the Bill of Complaint and order that the Divorce be granted in accordance with the Commissioner's recommendations. You must sign the Final Decree of Divorce and submit it to the Court for entry by a Judge. (If the Defendant filed a Waiver he/she does not need to endorse the Final Decree.) If the Defendant refuses to sign the Decree, you will have to serve him/her with notice to appear in Court on a Motions Day to enter the Final Decree. There are special Motions Day procedures which **must** be followed. You may pick up an outline of these procedures at the Clerk's Office Civil Division counter on the third floor of the Judicial Center.

Once your Final Decree of Divorce has been signed by a Judge, the Complainant will receive a certified copy from the Court. **To receive this copy**, you must include a self-addressed, stamped envelope when filing the final decree of divorce.

PLEASE REMEMBER

- You will be representing yourself.
- The Clerk/Court cannot advise or represent you.
- Your documents must be typed double spaced on 8 1/2" by 11" white paper.
- If you send any documents to the Court, mail them to:

Clerk of the Circuit Court
The Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

- All hand carried materials should be delivered to the Clerk's Office Civil Division counter on the third floor of the Judicial Center.
- If you would like to call and check on the status of a case, call Civil Case Information at:

(703) 691-7320
press 3,1,0

If you have any questions concerning this handout, please call (703) 691-7320 press 3,1,4,0. The Clerk's office hopes this information is helpful, but please remember that the Clerk's staff **CANNOT** give you any legal advice.